

## SC Chamber of Commerce

**1. The Technical Committee requests that the federal rule changes finalized by the EPA in December 2002 be wholly incorporated in the South Carolina rules.** Adoption of EPA's final NSR program rule changes will not be detrimental to the environment. The NSR program will remain intact, with the changes addressing burdensome and largely counterproductive elements. Clarification of these rules will provide industry with the certainty necessary to make investment and/or operational decisions. Failure to incorporate the federal rule changes in total may place industry in South Carolina at a significant disadvantage, or cause investment to occur in other states that have adopted the rule changes wholly. In addition, these changes will allow DHEC to make consistent, and we believe, more logical permitting decisions.

*Although the Department recognizes that many of the changes promulgated by EPA in the December 2002 rule are necessary and will benefit the program, we also believe that a "one size fits all" approach may not be the best fit for South Carolina. Thus, we believe it is necessary to amend the rule, where necessary, to fit our unique circumstances.*

**2. The Technical Committee supports the rule change that allows for "actual-to-actual" emission change accounting.** The federal rule change clarifies the intended purpose of the NSR program to apply only to significant actual emission increases – not theoretical/ potential emission changes. This change would avoid situations where both the regulated community and DHEC are forced to allocate substantial resources to address "changes" that would not result in actual significant emission increases. The provisions for calculation of the baseline for actual emissions are also very important. This provision adds certainty to the basis for calculating an existing emission baseline and eliminates determinations that can result in unrealistic actual baselines – particularly in situations where there is substantial cyclical variation in business production rates.

*The Department agrees that "actual-to-projected actual" applicability test is often a more appropriate prediction of future emissions resulting from a modification than the current "actual-to-potential" test. The "actual-to-potential" test will still be available to facilities wishing to streamline the permitting process.*

**3. The Technical Committee requests that emissions associated with malfunctions be included in the determination of baseline actual emissions and projected actual emissions.** Federal and SC regulations generally define a malfunction as "any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner." The definition of malfunction specifically excludes "failures that are caused, in part, by poor maintenance or careless operation." Nevertheless, malfunctions do occur. The onus is on the regulated community for proper accounting and reporting of malfunction events. DHEC, through its requirement that malfunctions be listed as deviations on a facility's Title V Annual Compliance Certification, has an existing means in place for reviewing malfunction determinations. The definition of baseline actual emissions requires that "the average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive 24- month period." This prevents facilities from using excess emissions during a malfunction as a means to inflate the baseline actual emissions to avoid PSD review. The Technical Committee supports this approach. At the same time, we believe that malfunction events that cause emissions which may be greater than those during normal operation, but which are not in excess of an emission limitation, should be allowed in the baseline and projected actual emissions

determinations.

*The Department does not agree that emissions associated with malfunctions should be included in the determination of baseline actual emissions or projected actual emissions. While malfunction emissions level estimations can be attempted for determining baseline actual emissions, predicting malfunction emissions as part of the projected actual emissions is arbitrary at best and prone to inaccuracies. Furthermore, such emissions would cancel each other out because they typically would be the same before and after a change. Since, determining these emissions is also time-consuming and burdensome, the Department believes it is more efficient to count only those emissions from start up and shut downs which are more predictable events.*

**4. The Technical Committee believes that concerns regarding quantification of emissions during malfunctions are unfounded.** Facilities need to have procedures in place to quantify emissions during startups and shutdowns. These same procedures can quantify emissions during malfunctions. Similarly, §52.21(aa)(7)(iv) stipulates that a PAL permit requires the inclusion of emissions from startups, shutdowns, and malfunctions in calculations for compliance with a PAL permit. Thus, if quantification of malfunction emissions is required for PAL compliance purposes, then these same quantification procedures should be allowed to quantify malfunction emissions for use in baseline actual emissions and projected actual emissions determinations.

*The Department believes that emissions from malfunctions calculated for compliance with a PAL permit are different than those malfunction emissions used in calculating the baseline and projected actual emissions. The PAL permit limit is a “hard cap” and the federal rules require stringent recordkeeping and monitoring requirements to ensure that this cap is maintained.*

**5. The Technical Committee supports the Clean Unit exclusion because Clean Units are by definition, low emitters.** This exclusion is protective of the environment because it requires that the Clean Unit must have already received a major NSR permit in the last ten years and that emissions controls be installed. Additional permitting and retrofit of units that have recently been through NSR permitting and already utilize recent technology would provide marginal benefit at a high cost, both in dollars and time. Therefore, this exclusion makes sense for both business and regulators because it reduces the permitting burden and increases operational flexibility. NSR review for changes to Clean Units would not generally result in revised controls and would only serve to delay projects and tie up limited regulatory resources. The 10-year limit is appropriate because technology improvements during such a period are usually incremental at best. This period provides needed certainty for companies to justify capital investments. The Clean Unit exclusion will be an incentive to industry to install pollution control equipment to reduce permitting requirements and increase operational flexibility.

*The Department agrees with the concept of allowing a NSR exclusion for Clean Units.*

**6. The Technical Committee requests clarification of the relationship between paragraph x(3)(iii) and x(6).** DHEC added x(3)(iii) to require a facility to submit a request for Title V modification under paragraph x(6) to qualify as a Clean Unit. Per our discussion in the May 26, 2004 meeting of the NSR Stakeholder team, the regulation should be clarified to explain that the Clean Unit designation is effective upon approval from DHEC and not when the Title V permit is modified. The regulation should include a 30-day turnaround commitment for the approval notification from DHEC.

*The Department agrees that clarification between these two paragraphs is needed and has proposed to revise the draft to require notification prior to using the Clean Unit designation. Clean Unit status is not contingent upon approval by the Department. However, the regulations are clear that the designation is only applicable to qualifying units. Therefore, we have added a provision to paragraph (x)(3)(iii) to*

*require facilities to include a statement with the notification to the Department affirming that the unit meets the qualifications specified in paragraph (x)(3)(ii). This should clarify that though the Title V permit needs to be modified, Clean Unit status can proceed before this modification occurs.*

**7. The Technical Committee requests that the Pollution Control Project (PCP) exclusion include environmental benefits across all environmental media when evaluating a project for this exclusion.** The PCP exclusion procedural requirements in Section (z)(4) should include a method for reviewing a project for total environmental benefits across all environmental media instead of limiting benefits to air emissions. The intent of this exclusion is to reduce pollution to the environment, which can be achieved with several technologies in any environmental media. A project that removes a significant amount of pollutants from a wastewater discharge, but generates an insignificant amount of air emissions should qualify for this exemption if the overall affect on the environment is less.

*The Department believes that while such a request may have merit, it is outside the scope of this regulatory revision.*

**8. The Technical Committee requests that DHEC replace the language that allows a written notification for listed PCP projects.** These projects have been identified by EPA as environmentally beneficial and should proceed without bureaucratic delays. This will not relieve a facility from the requirements of South Carolina Regulation 62.1; but would allow for construction permit exemptions to be granted for these projects. SC Reg. 62.1, Section II.A(1)(a) allows for DHEC to grant permission for sources to proceed with alterations or additions without issuance of a construction permit when these alterations or additions do not increase emissions. These listed projects would fit this construction permit exemption criteria and would support the construction permit streamlining efforts in South Carolina. Furthermore, there are other subsections in SC Reg. 62.1, Section II that are applicable (specifically the permit exemption Section, II.F) and would fast track these environmentally beneficial projects.

*It is not our intent to require permits for all listed PCPs. Rather, each project will be reviewed by the Department. This review may or may not result in a permit action. Thus, the Department has revised paragraph (z)(2) to indicate that it is a “review” and not a “permit” process.*

**9. The Technical Committee requests that DHEC change the language for non-listed PCP projects to allow for air construction permit exemptions.** PCP projects not specifically listed may qualify for a construction permit exemptions, which again would speed their implementation. Current language in Section (z)(3) limits which Sections of SC Reg. 62.1 apply, and should be changed to include the entire regulation. Specifically, in Section (z)(3) the words: “paragraphs A. and G.5 of” and “Section II” should be deleted.

*The federal rule does not allow for this and if the Department were to add such language, we would run the risk of having our SIP disapproved.*

**10. The Technical Committee requests that the sentence “However, will be reviewed through R. 61-62.1 Section II A, Permit Requirements;” in (aa)(1)(b) be stricken from the regulation.** The reference to additional wording is already implied and adds extra levels of informational complexity to this regulation. A company reviewing a project for NSR requirements would be knowledgeable enough to know that additional state permitting requirements might be required. If this is strictly a matter of clarification, it should be added elsewhere, e.g. in the minor source permitting program regulation.

*The Department disagrees that the addition of this language adds complexity to the regulation. Companies coming into the State for the first time may not be aware of the State construction permit*

*program, and this language would clarify the need for this type of permit.*

**11. The Technical Committee believes that the inclusion of regulations addressing minor sources in the proposed NSR regulation is inappropriate.** While those regulations may need to be referenced in the NSR regulation to direct the regulated community to the applicable regulations for minor sources, inclusion of the actual regulatory requirements in this regulation adds an unnecessary level of complexity not found in the EPA's NSR regulation, unnecessarily expands the universe of stakeholders interested in the promulgation of the NSR regulation to include those covered only by state permitting requirements and contradicts the efforts underway to streamline the permitting process. The Chamber recommends omitting state-only requirements from the NSR regulation to avoid the necessity of legislative approval for this regulation and streamline the promulgation process by remaining consistent with the federal requirements.

*The Department disagrees that it is inappropriate to include regulations addressing minor sources in the proposed NSR regulations. As stated in comment #10, adding this language provides clarity to sources coming into the State for the first time. In addition, the Department believes that this additional language will not expand the universe of stakeholders to include those covered only by the state permitting program since the requirements of this regulation apply to major sources only.*

**12. The Technical Committee requests that (aa)(2) be clarified in the regulation. As it is currently written, this sentence is unclear.** The Technical Committee suggests that the sentence be changed as follows: "For the purposes of PALs, the definitions in paragraphs (aa)(2)(i) through (xi) apply. When a term is not defined in these paragraphs, it shall have the meaning given in paragraph (b) or in the Clean Air Act."

*The Department agrees with this comment and has changed the language to reflect the comment.*

**13. The Technical Committee requests DHEC amend Paragraph (aa)(6) to follow the federal rule concerning the usage of a unit's PTE in establishing a PAL.** The Federal Rule allows a unit constructed after the established 24-month baseline to use the PTE in establishing a PAL. While the DHEC draft rule only allows a unit's PTE to be used if the unit was constructed 24 months prior to the permit application submittal. The concern is that a newly constructed unit may not be fully functional or operating at full capacity within the short time period between the construction and the submittal of a PAL permit application. This concern is especially true for a facility making a significant expansion. Thus, a facility would be unfairly penalized and experience a major disincentive for obtaining a PAL permit.

*The Department disagrees with this comment. While a source is allowed to select any two consecutive years within the last ten years as the baseline, the Department believes that any source that has been in operation longer than two years would have sufficient data in order to determine actual emissions and not have to rely upon the unit's potential to emit. However, the Department agrees that a unit that was constructed and not placed into operation 24-months prior to the permit application submittal would not have the data available to determine actual emissions. Therefore, the Department will change the language in paragraph (aa)(6) to require only those sources that have not been in operation for 24-months prior to the permit application submittal to use the units PTE in establishing the PAL baseline.*

### **South Carolina Pulp & Paper Association**

The comments received were identical to the comments submitted by the South Carolina Chamber of Commerce. In order to conserve space, the comments and responses are presented above.

## **Trinity Consultants**

The main benefit of a PAL is the removal of the burdensome requirement of minor source permitting. As long as the facility is within their PAL limits, it seems that they should be able to install new equipment without completing an application and waiting for department review. Due to the restrictiveness of the PAL, there should be some benefit such as the ability to make rapid production changes without going through minor source permitting. In order to respond to market demand, rapid changes are often needed. Although minor source permitting can be relatively quick, facilities often wait 5-6 months for a state construction permit. A PAL should allow for the flexibility to NOT go through minor source permitting.

*The PAL permit allows facilities to be exempt from major PSD and NSR permitting. This considerably streamlines the process for facilities. However, this regulation does not absolve facilities of the requirements to comply with other regulations. Therefore, facilities would still be subject to minor source permitting under R. 61-62.1. However, our minor source permitting program is substantially less burdensome than the major source permitting. While in rare cases a minor source permit has taken 5 or 6 months to process, this is the exception and often these can be turned around in a matter of days.*

## **Duke Power**

Duke Power strongly encourages South Carolina to adopt the federal changes to the NSR program, in their entirety, because these revised rules will benefit both the environment and the economy of South Carolina. The flexibility of these new rules will allow industry to upgrade, modernize, and improve their facilities in an environmentally and economically beneficial way. EPA's revised NSR rules should be applied nationally and consistently between states. Adoption of different rules could place South Carolina at an economic disadvantage compared to other states who do adopt the rules as written by EPA. For companies who have facilities in multiple states, consistent and streamlined permitting requirements would be an attractive factor when locating new facilities or expanding existing facilities.

*Due to the similar nature of this comment to comment #1 posed by the South Carolina Chamber of Commerce, the Department's response can be found there.*